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ABSTRACT

This paper analyzes and evaluates federal assistance to Indians on or near reservations and recommends public policies to promote self-determination through economic development. Most Indian tribes rely on federal funds for basic necessities and services. At current funding levels, reservation residents lead lives of deprivation or opt for outmigration to achieve personal self-sufficiency. The goal of federal policy should be to raise the standard of living on reservations by expanding opportunities for individuals to function independently of the federal welfare system. A precondition to achieving this goal is the creation of effective tribal governments. The key to tribal economic success lies in taking advantage of all available federal, human, and natural resources. In particular, a comprehensive reform of reservation educational and training systems is necessary to expand self-governance initiatives. Tribes that achieve self-sufficiency will face conflicts between economic development and cultural identity. This paper provides overviews of: (1) American Indian demography; (2) the history of federal Indian policies; (3) reservation economies (employment and welfare); (4) land resources and land use (agriculture, mining, water rights, and environmental issues); (5) federal economic development programs, private investments, and reservation gambling; (6) education (schools, funding, educational attainment, achievement, tribal colleges, and use of new technologies); (7) job training programs; and (8) tribal government, courts, and taxation issues. (SV)

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The Equivocal Prospects for Indian Reservations

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FEDERALLY RECOGNIZED INDIAN TRIBES

Prepared by the U. S. Geological Survey
in cooperation with the Bureau of Indian Affairs
October 1981

Preface

The Center first reviewed federal Indian reservation programs more than two decades ago. The title of that study indicates the conclusion: BIG BROTHER'S INDIAN PROGRAMS - WITH RESERVATIONS. In contrast, we currently find a more positive attitude towards assisting Indians living on or near reservations to achieve economic self-sufficiency. Progress, however, has been painstakingly slow. This paper is an analysis and appraisal of federal assistance to Indians on or near reservations. The emphasis is on developing programs that would help Indians control their own destinies. Economic development, it is argued, is the key to achieving this goal.

The attainment of self-determination is dependent upon developing the institutions and capabilities for tribal self-government. While many tribes may never succeed, those that do will need to confront the fact that some aspects of their cultures present obstacles to economic development. Conflicts are inevitable between those who favor change and those who prefer clinging to established practices and oppose economic development. Vested interests in tribal councils are likely to oppose changes which would infringe upon their powers.

Paradoxically, if Indians living on reservations are to achieve self-determination, increased federal aid is necessary to help reservations develop their economic base and social institutions. Because Indians do not speak with one voice about the desired aid, the federal government may not be able to satisfy diverse Indian needs and values. The achievement of economic self-sufficiency may require Indian tribes to yield some features of their special legal status. Clearly, the

attainment of tribal self-determination will not come easily.

During the past two decades successive federal administrations and congresses have reversed policies that made Indians wards of the federal government. Wiping out two centuries of debilitating actions has proved a daunting challenge. That should not deter, however, American society from trying harder to help Indian tribes achieve control over their communities.

This paper is concerned with the first residents in the contiguous 48 states. We refer to them as Indians, as distinguished from Native Americans who inhabit all the 50 states.

Acknowledgements

The assistance offered by officials from the Bureau of Indian Affairs, Indian Health Service, and other federal agencies is gratefully acknowledged. We are particularly indebted to Norm DeWeaver, Indian and Native American Employment and Training Coalition, Robert Nelson, Department of Interior, and Alan Parker, National Indian Policy Center, for critical and valuable council. Miriam Washington, at the Center, provided editorial reviews of several drafts.

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Indians in American Society

"May the great spirit shed light on yours, and that you may never experience the humiliation that the power of the American government has reduced me to, is the wish of him who, in his native forests, was once as proud as you." - Black Hawk

*D*uring its first century the federal government signed 370 treaties with Indian tribes, treating them formally as sovereign nations. These legal niceties were quickly abandoned as federal laws and court decisions denied tribes the right to self-governance and made them wards of the federal government.

Since reservations were first created, federal agencies have placed stringent controls on tribal activities. Whether federal policy advocated segregating Indians from mainstream America or forced their assimilation, federal agencies consistently reenforced Indians' dependence on government programs and institutions. On many reservations the policies produced a welfare system that effectively stifled individual and tribal initiatives, precluding the development of viable reservation economies and the achievement of self-sufficiency.

In the 1970s the federal government took halting steps to reverse the debilitating effects of its policies. It declared a "new course" for Indian policy, making self-determination its goal. The rhetoric was rarely followed by "liberating" action, however. Substantive initiatives that would have transferred legal and administrative control from federal agencies to tribal organizations proceeded at a snail's pace. While the government is only partially to blame for the slow progress, federal agencies have failed

to monitor or assess the effectiveness of the new policies and programs. What is clear is that the living conditions on reservations remain dismal.

The Bureau of Indian Affairs (BIA) estimated that in 1991 unemployment on reservations was a distressful 45 percent. Half of reservation residents lived in poverty, more than triple the national rate. Only 46 percent of adult Indians over age 25 completed a high school education or received a G.E.D., compared with 85 percent for the country.[1] Poor health, lower life expectancy, lower educational attainment, and the highest alcoholism rate of any racial or ethnic group characterize reservation life.

There is no simple prescription that will cure the ills confounding the hopes of reservation residents. Customs, economic conditions, size, location, and legal status of tribes vary widely, but as a starting point, all reservations have some resources, whether physical or human, upon which functioning economies can be built. Federal agencies can provide the technical and financial assistance needed to enable Indians to harness these resources. Tribal and individual self-sufficiency should be the overriding goal of the policies. Education and social services as well as resource management policies need to be overhauled, and tribal and individual forays into entrepreneurship need to be encouraged. These activities should be the grist of joint federal and tribal policies.

Having realized the need to develop the natural and human resources on reservations, the federal government has nearly doubled (adjusted for inflation) its assistance to Indians in the last two decades. As of 1992, $4,768 were spent per Indian residing in BIA's services areas.

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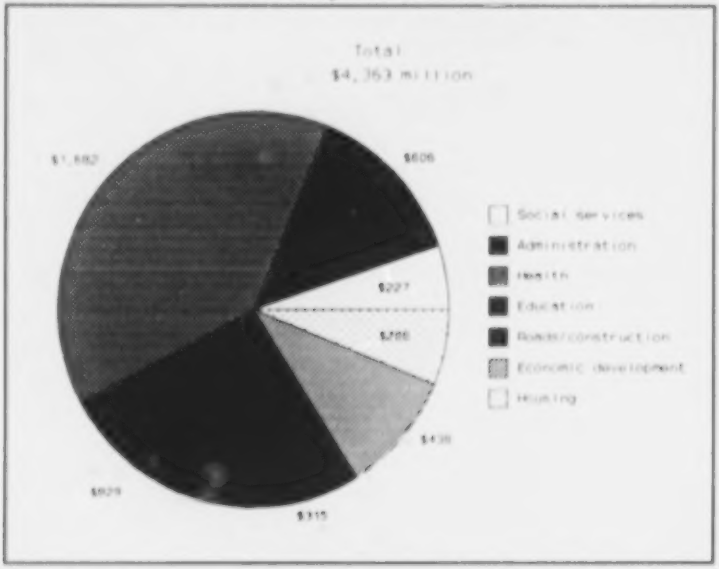
[1]Data provided by Norm DeWeaver, The Indian and Native American Employment and Training Coalition, based on his analysis of 1990 U.S. Census estimates.

Matching appropriate strategies with existing settings is the first priority. The exploitation of natural resources has been a traditional mainstay of federal support programs. In settings where farming, ranching, timber production, and mining are feasible, federal policies need to shift from production strategies to ones that lead to self-sufficiency. But many reservations, especially those in the Plains and Southwest, are located on barren land where human resources hold the only viable hope for economic independence.

Developing human resources on reservations is essential for achieving self-sufficient economies. Emphasis needs to be placed on education and training initiatives that would prepare tribal members to enter the work force where opportunities exist, whether on or off the reservation. A flurry of legislation in the 1970s and 1980s reflected congressional faith that reforming Indian education would enhance the economic viability of reservation populations and decrease poverty. While educational attainment rates have improved, academic achievements continue to lag significantly behind the national average. Without a skilled work force, attracting private enterprises to isolated reservations is even more unlikely. Currently when jobs do exist, the majority of reservation residents lack the skills needed for all but the most menial or labor intensive positions.

A major impediment to developing employment opportunities is a shortage of business capital. Most federal assistance for reservations is earmarked for necessities--food, housing, health care, and education--not the generation of employment (figure 1). A reallocation of resources to provide more seed money for business start-up is not feasible under current priorities and funding levels. To achieve a semblance of tribal self-sufficiency, the federal government needs to increase the supply of venture capital for tribal and individual enterprises. These funds should not be distributed on a per capita basis, as is the case for most programs, but allocated to tribes whose governments have demonstrated an ability to use the funds effectively.

Figure 1. In 1992 Congress allocated only 11 percent of federal assistance for economic development on or near reservations.



Source: U.S. Office of Management and Budget.

Since its inception, the Bureau of Indian Affairs (BIA) had been the de facto policymaker and administrator on most reservations, blocking the development of tribal self-governance. Over the past two decades this relationship has changed for many tribes. Most recently, the federal government has conducted a self-governance project, providing tribal governments with the opportunities to develop the management skills necessary for effective leadership. More importantly, it is offering tribal governments the opportunity and ability to govern their reservations with minimal federal interference. Only a few dozen tribes, however, have the ability to take advantage of this program.

A successful Indian policy should focus on enhancing tribal educational and skill competence, while simultaneously expanding economic opportunities and self-sufficiency. If such a policy is nourished and sustained, employment opportunities will improve, per

capita incomes will increase, and the need for special federal programs will diminish. This will not occur soon, and for most tribes the future is bleak. While self-sufficiency remains a dream for many, the reality is dependence on the federal government or migration to economically viable areas.

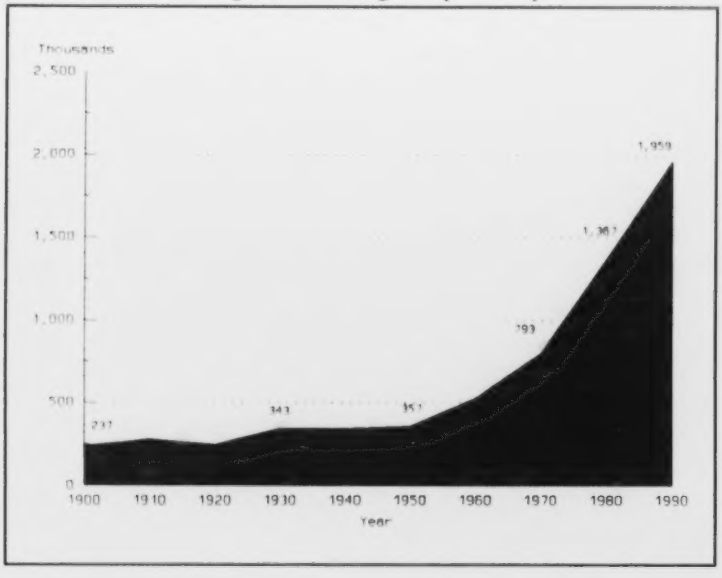
Many tribal governments are weak, fractionated, and lack the administrative skill to take advantage of the newly evolving federal policies. Political infighting among different clans or groups within the same reservation is common and often ends in political gridlock. Economies continue to stagnate as opposing leaders bicker. Equally detrimental to reservations' economic health is the current brain drain, as individuals who acquire salable skills often leave reservations to seek economic opportunity elsewhere. Today most tribes are struggling to survive. Even tribes with significant non-federal business operations have difficulty overcoming the impediments created and promoted by the federal welfare system.

A related problem is the loss of cultural identity that often accompanies economic success. Ethnic or racial groups that migrated to these shores have been challenged with the balancing of acclimatization to mainstream society with maintaining their heritage. Indian tribes face an even greater challenge because tribal cultures, languages, and traditions differ, and they lack a common heritage. As a result of federal policies, in particular allotment and termination, Indians constituted only half the population on reservations. Intermarriage between non-Indians and Indians is common. This trend is bound to increase with economic success, or as poverty becomes so entrenched, Indians migrate off-reservation. Preserving Indian cultures from the absorption into mainstream America may, in the long term, prove the most difficult task Indians face.

Demographics

In 1990 the U.S. Census Bureau estimated the Native American population at nearly 2 million--0.8 percent of the U.S. population. According to the Census Bureau's definition, Native American includes American Indians, Aleuts, and Eskimos. The latter two groups, which comprise the Alaskan Native population, account for 4.1 percent of the Native American population. Based on government reports, the Indian population experienced remarkable growth during the latter half of this century. It increased by 46 percent between 1900 and 1950, but grew more than fourfold during the succeeding four decades (figure 2). Between 1980 and 1990, the Native American population grew by 37.9 percent, compared to the 9.8 percent increase by the total U.S. population.

Figure 2. According to government reports the Indian population experienced dramatic growth during the past 40 years.



Sources: C. Matthew Snipp, *American Indians: The First of This Land* (New York: Russell Sage Foundation, 1898), p. 64; U.S. Census Bureau, 1990.

Some of this growth has been real, but most recent increases are a statistical artifact. True increases have been attributed to improved health care and living standards on reservations, resulting in increased longevity and decreased infant mortality. In regions served by the Indian Health Service, primarily those on or near reservations, the Indian birth rate is almost double that of the U.S. population--30.0 births per 1,000 population, as compared to the general population's birth rate of 15.7. This accounts for part of the increase.

Most of the Bureau's recorded increase, however, reflects changes in reporting and self-identification. Enhanced enumerating techniques by the Census Bureau along with better statistical records for Indians are

responsible for some of the changes. Within the past two decades it has become fashionable to claim Indian heritage, as an increasing number of U.S. citizens have been marking the Native American box on their census form. If quantum blood levels or enrollment in a federally recognized tribe were the standards for claiming Indian lineage, not all these newly discovered Indians would qualify. Individuals have also abused the self-reporting system to garner special benefits relating to government contracts, fishing and hunting rights, or other tribal benefits.[2]

Almost half of the Indian population lives in the West and three of every 10 live in the South. One out of every two Indians resides in six states:

	Percentage of Indian population
Oklahoma	12.9
California	12.4
Arizona	10.4
New Mexico	6.9
Washington	4.2
North Carolina	4.1

Reservation and trust lands account for almost 2 percent (54 million acres) of U.S. land in the lower 48 states. Besides assisting Indians on or near reservations and trust lands, the BIA also services non-reservation areas in Oklahoma where federally recognized tribes maintain some jurisdiction. While the reservation system in Oklahoma was disbanded when oil was discovered in the area, the government remained obligated to tribes located in the state. The BIA services areas are home to less than half of the 1.9 million Indians living in the U.S. In 1990 close to a third of the Indian population lived on Indian land.

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[2]Sandra D. Atchison, "Who Is an Indian, and Why Are They Asking," Business Week, December 26, 1988, p. 71.

	Population	Percent of Indian population
Total[1]	1,874,000	100.0
Indian Areas	638,000	34.0
Reservations/trust lands	437,000	23.3
Oklahoma service areas	201,000	10.7
Non-Indian land	1,235,000	65.9
BIA service areas (1991)[2]	915,000	48.9

[1]Excludes Eskimos and Aleuts
[2]BIA services areas include Indians living on or near reservations.

On some reservations Indians account for a minority of residents, but on the 10 most populated reservations Indians constitute the bulk of the population. These reservations and trust lands are home to half of the reservation Indians.

Reservation/ trust lands	1990 Indian population	Indians as percent of reservation population
Navajo, AZ/NM/UT	143,405	96.6
Pine Ridge, NE/SD	11,182	91.5
Fort Apache, AZ	9,825	94.5
Gila River, AZ	9,116	95.6
Papago, AZ	8,480	97.1
Rosebud, SD	8,043	83.0
San Carlos, AZ	7,110	97.5
Zuni Pueblo, AZ/NM	7,073	95.4
Hopi, AZ	7,061	95.9
Blackfeet, MT	7,025	82.2

Assimilation and government relocation policies in the 1960s and 1970s as well as voluntary out-migration account for the location of many Indian people living off Indian territory. As a consequence, several cities have Indian populations larger than all but the largest reservation.

Metropolitan area	Indian population 1990
Los Angeles/Anaheim	87,500
Tulsa	48,200
New York/New Jersey/LI	46,200
Oklahoma City	45,700
San Francisco/Oakland	40,800

The bulk of Indian aid is directed at those living on or near reservations or in Oklahoma's service areas. Several federal programs serve Indians residing outside of BIA service areas by funding urban health care centers, educational impact aid to public schools, and job training. These outlays are relatively small proportional to the financial support provided to reservation based programs and those in Oklahoma.

Government policies that oscillated between isolating Indians on reservations and integrating them into the mainstream have contributed to the current distribution of the Indian population. Neither policy was successful, and both have compounded the problems of reservation Indians.

The Evolving Federal Policies[3]

Initially, the U.S. government treated Indian tribes as sovereign nations and settled conflicts through treaties. The first treaty between the U.S. and an Indian nation, the Delaware tribe, was signed in 1778. Congress, however, signaled the shape of future relations the following year by assigning responsibility for Indian affairs to the War Department. While 369 treaties followed, settlers and the army often ignored them and resorted to massacres to "resolve" disputes. Federal commitments were rarely honored.

The establishment of the Bureau of Indian Affairs in 1824 did not alter federal relations. As manifest destiny became the guiding policy, the new agency embarked on a sustained usurpation of tribal authority. The Indian Removal Act of 1830 was the first and most important law promoting the relocation of Indians west of the Mississippi, away from settlers' westward push. The law authorized the president to sign treaties with tribes, and to "exchange" their aboriginal lands for western territories--Indian Territory.

In 1831 the Supreme Court provided a legal basis for BIA intervention in tribal affairs by declaring Indian

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[3]Richard S. Jones, "American Indian Policy: Background, Nature, History, Current Issues, and Future Trends" (Washington: Congressional Research Service, March 12, 1987), pp. 17-39; Vine Deloria Jr. and Clifford Lytle, The Nations Within (New York: Pantheon Books, 1984), pp. 140-153; Sharon O'Brien, American Indian Tribal Governments (Norman, OK: University of Oklahoma Press, 1989), pp. 49-90.

tribes to be "domestic dependent nations," subject to congressional authority. The following year, however, the Supreme Court reaffirmed the validity of tribal sovereignty in *Woster v. Georgia* (1832), but could not halt the removal of Indians to the West. In 1849 the BIA was transferred from the War Department to the Interior Department, but the move was accompanied by few noticeable changes in Indian policy. After the 1850s, as a greater number of settlers migrated into Indian Territory, tribes were relocated to barren isolated reservations. In 1871 Congress ended its policy of signing treaties with tribes and confirmed the prevailing view that Indian tribes were not sovereign nations but wards of the government.

In the following decade the federal government adopted a policy favoring the assimilation of Indians into white society. The General Allotment Act of 1887 reflected this view and remained in effect for the succeeding four decades. Reservation land, usually desolate and unproductive, was allotted to tribal members with the misguided hope that they would become self-sufficient farmers and integrate into the larger society. Families received 160 acres while single adults were awarded 80 acres. Allotments were to be held in trust by the government for 25 years, when Indians who accepted allotted land were to be accorded U.S. citizenship and the trust period ended. Indians who stayed on reservations and maintained their tribal identity remained wards of the federal government. It was not until 1924 that Indians born on reservations were granted citizenship. The 1887 act also authorized the secretary of the Interior Department to sell "surplus" land--land perceived as not needed or used by Indians--to white settlers. Prior to 1887, Indians held title to approximately 167 million acres. By 1933 they had lost two-thirds of their land base, with minimal compensation.

A 1928 congressional report depicting the deplorable living conditions and poverty on Indian reservations prompted Congress to reevaluate its Indian policies and to enact the 1934 Indian Reorganization Act

(IRA). The act halted the allotment policy and extended indefinitely the federal government's trust responsibility for Indian lands. It also authorized the establishment of Indian governments on reservations. In a modest attempt to make up for lost tribal lands, the IRA authorized the Interior secretary to spend $2 million annually for the purchase and consolidation of reservation lands that were now dotted with non-Indian land owners.

In 1953 Congress drastically altered Indian policy again; the new goal was active assimilation. If special treatment provided in treaties were terminated, Congress rationalized, Indians would be compelled to integrate into American society. To implement this policy, Congress terminated support for over 100 tribes without offering alternative forms of assistance to the members remaining on reservations. It funded, however, the voluntary relocation of Indians from reservations to metropolitan areas and provided transportation, transitional monetary support, and promises of job placement. An undetermined number of Indians left reservations, but many returned, unable to adjust to urban life. After 17 years, the Nixon administration acknowledged that termination policies were a failure.

The abandonment of termination required the federal government to revise its Indian policy once more. To make amends for the damage caused by termination policies and to alleviate poverty on reservations, Congress proposed to grant Indians greater control over the programs affecting their lives. The 1975 Indian Self-Determination and Education Assistance Act was the first of several laws that sought to promote tribal self-determination. It authorized tribes to contract with federal agencies to assume responsibility for managing tribal affairs, including educational, health, and social services, as well as their natural resources. The act did not relieve the federal government of its responsibilities to Indians, however, and included a commitment to preserve the cultural heritage of Native Americans.

In addition to legislative enactments, court

decisions have played a major role in shaping the lives and welfare of Indians. Judicial interpretations of century-old treaties and legislation are the basis for modern day negotiations between tribal governments and federal and state agencies. Courts have shaped the rights of tribal and state governments to develop land, tax, and regulate businesses on reservations.

The enactment of policies that encourage self-determination has shifted some of the administrative responsibilities to tribal leaders and reservation-based organizations. Two decades ago BIA micromanaged all expenditures appropriated to the agency. Signifying policy changes during the past two decades, about 40 percent of BIA's funds are currently contracted out to tribes. Yet control over policy formulation and funding of Indian assistance programs resides in Washington.

Tribes too have hindered the implementation of self-determination programs. After prolonged forced dependence, many tribal governments lack the sophistication and cohesiveness needed to break their reliance on federal oversight and assistance. Not all tribes want self-determination or are ready to accept the responsibility it brings. Centuries-old feuds among clans within tribes and ideological conflicts about the administration of tribal affairs compound federal agencies' bureaucratic reluctance to relinquish power.

The inherent tension between the federal agencies' trust responsibility and the goals of self-determination has slowed the implementation of self-determination practices. While tribes cling to the federal government for support, they also strive for greater control over the policies and programs affecting their lives. Given the inherent clash of goals, it is not surprising that consensus for accepting self-determination remains elusive.

Reservation Economies

*M*ost reservations contain few natural resources, are remote from sizable markets, have inadequate transportation systems, and lack trained and educated work forces. As a result their economic bases are extremely limited, and joblessness is a critical problem. The consequence is persistent deprivation and chronic economic depression on all but a few reservations. Federally-funded programs account for up to 50 percent of total employment, while up to one-third of those employed work outside the reservations.

As defined by the Bureau of Labor Statistics (BLS), unemployment is a poor measure of joblessness on reservations. The BLS classifies only individuals seeking work as unemployed, failing to consider that many reservation Indians do not actively seek employment because there are no jobs to be had in reasonable proximity to their homes.

The BIA rejects the BLS definition of unemployment. It counts as unemployed, Indians who are 16 years or older, who live on or near reservations, are not enrolled in school, are not responsible for child care, but are able to work. The BIA estimates are based on data acquired through a variety of sources including house-to-house surveys conducted by tribal program administrators and contractors, school records, and employment records. Using its methodology and data, the BIA estimated that in January of 1991 the average unemployment rate on or near reservations was 45 percent. While the BIA may overestimate unemployment, its methodology offers a better indicator of the economic condition on reservations than the BLS estimates. Based on the BIA count, in January 1991 the average

unemployment rate on the 30 reservations with a population of 3,000 or greater was 46 percent. Unemployment rates on six of the 10 largest reservations appeared to be even higher:

Reservation/ Trust land	BIA estimate	Estimates using BLS unemployment definition[4]
	January 1991	April 1990
Navajo	45	29.5
Pine Ridge	73	32.7
Ft. Apache	61	35.3
Gila River	38	30.6
Papago	66	23.4
Rosebud	86	29.5
San Carlos	42	31.0
Zuni	40	13.8
Hopi	60	26.8
Blackfeet	64	31.1

Reservation residents are subject to low wages when they find employment. In 1990 only 25 percent of employed Indians on or near reservations earned $7,000 or more annually compared with 75 percent for the rest of the nation. Pervasive joblessness and low wages have led to high poverty rates. Half of the reservation Indians live below the poverty line.

An inordinate proportion of reservation residents are therefore dependent on welfare. The most widely used means-tested programs are aid to families with dependent children (AFDC), food stamps, food distribution program on Indian reservations (FDPIR), and the BIA's general assistance program. The FDPIR, an alternative to food stamps, provides monthly food packages to eligible Indians. In July 1991 nearly 116,000

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[4]Norm DeWeaver, Indian and Native American Employment and Training Coalition, based on analysis of 1990 U.S. Census data.

persons, over 12 percent of residents on or near reservations, participated in this program. More than 100,000 Indian households nationally participated in the food stamp program in July 1991. (Data on the food stamp program participants are available by state, not by reservation.) The two programs supplement the diets of almost 150,000 households. Given the high incidence of poverty, it is not surprising that Indians are disproportionately represented among AFDC recipients.[5]

State	Indians as percent of state population	AFDC recipients
Arizona	5.6	17.8
Montana	6.0	25.5
New Mexico	8.9	17.7
North Dakota	4.1	32.9
Oklahoma	8.0	11.5
South Dakota	7.3	54.2
Wyoming	2.1	12.3

Taken together these data indicate that most reservation economies are more dependent on welfare than employment as a source of income. Without the influx of federal dollars many reservations could not survive.

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[5]U.S. Census Bureau, Commerce News, March 11, 1991, CB91-100, table 8; U.S. Department of Health and Human Services, "Characteristics and Financial Circumstances of AFDC Recipients, FY 1990," table 10.

The Potential of Economic Programs

The economies and social structures of reservations are dominated by the federal agencies charged with delivering aid. The debilitating effect of Indian reservation dependency on welfare is a pervasive obstacle to achieving self-sufficiency. Given appropriate federal and tribal policies, however, an undetermined number of reservations may realize real progress. Some have mineral deposits or timber, others have attracted private investment in manufacturing and tourism. Farming, ranching, and waste management facilities are other sources of income. Gambling has recently become a significant source of income for scores of tribes and jobs for their members.

Federal efforts to improve economic conditions on reservations fall into two categories: the development of land resources and the subsidization of industries and commercial enterprises. Beyond promoting land development and commercial enterprises, the government needs to take the next step, and advocate tribal control over, and responsibility for, reservation resources and the economies they fuel. Only then will tribes have the chance to both reap the rewards of economic success and assume responsibility for failure.

Land Resources

Prior to the 1970s, the government's fiduciary was the guardian and de facto manager of Indians' greatest asset--their land. The government was also responsible for managing much of the revenue accrued from these lands. These two activities gave federal agencies control over most wealth. As a result, tribal governments had been precluded from deciding how their assets should be

developed and distributed. This arrangement resulted in continuous friction between the federal agencies and tribes as federal development and spending priorities often conflicted with tribal priorities.

Until the 1970s, tribes rarely successfully challenged federal power over the disposition of Indian resources. For example, in the 1950s, the Interior Department promoted the mining of uranium on Indian reservations, while other land was expropriated for constructing damns and developing hydroelectric power for use by non-Indians. In these and other instances tribal interests were ignored. The Bureau of Land Management (BLM) and Bureau of Reclamation (BuRec) were the major Interior Department agencies overseeing reservation land use. These agencies rarely consulted tribes about the use of their land. The Interior Department supported their policies, even when the BIA disagreed.

The federal agencies invariably denied tribal leaders the opportunity and experience of weighing the costs and benefits of development. The jobs and income from land development involve environmental pollution that comes with deforestation, coal mines, oil wells and riggs, and industrial development.

Prior to the 1970s, when tribes and individuals agreed to develop and lease their land, their lack of business experience and acumen about the worth of their resources resulted in unfavorable deals. Federal agencies frequently violated their fiduciary responsibilities and conspired with contractors to defraud tribes. Agencies often withheld information or misinformed tribes about the worth of their land or benefits that would go to non-Indian businesses.[6]

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[6]Marjane Ambler, Breaking the Iron Bonds: Indian Control of Energy Development (Lawrence, KS: University Press of Kansas, 1990), pp. 66-67, 222-223.

Federal agencies have also ignored the health hazards associated with the industrial and energy development they promoted. When the largest low-level radioactive waste spill in U.S. history occurred at the Chain Rock Mines on the Navajo reservation, none of the agencies with jurisdiction--the Department of Energy, Environmental Protection Agency, or the Nuclear Regulatory Commission--cleaned up the spill. Nor did they ensure the safety of Navajos living in close proximity or down wind and stream from the mines. As a result, radioactivity has rendered the water undrinkable and the land hazardous for grazing.[7] Trailings from uranium mines and mills remain scattered throughout Indian reservations, and radioactive dust in and around the mines and mills have made the land unusalable and may cause future health problems.

Portions of other tribes' reservations--the Mohawks (NY), the Cherokees (OK), the Seminole (FL), and the tribes of the Ft. Belknap Reservation (MT)--are wastelands due to the dumping of chemical by-products by nearby industrial plants. Other tribes are victimized by illegal toxic wastes dumped on their reservations. No single agency is responsible for dealing with these problems, and none is willing to assume the task. Reservations are not protected by the country's major hazardous waste law--The Resource Conservation and Recovery Act of 1978. They were not covered by the clean air, clean water, safe drinking water laws, and other anti-pollution laws enacted in the 1970s until amendments were added in the 1980s.[8]

The exclusion of Indians from federal regulations

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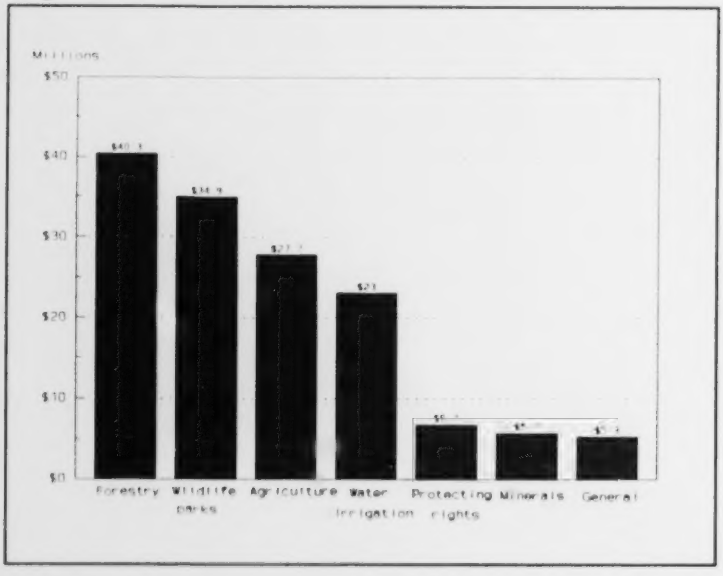
[7]Bill Lambercht, "1979 Spill on Navajo Land Leaves Poisonous Legacy," St. Louis Post-Dispatch, November 19, 1991, p. 7A.

[8]Bill Lambercht, "Indians Say EPA Not Doing Enough," St. Louis Post Dispatch, November 18, 1991, p. 7B.

is considered by some to be an example of self-determination, allowing tribes to decide what type of development is best. As sovereign governments, tribes can develop their land unencumbered by environmental laws. Environmental groups have, on occasion, fought tribal development projects. Sovereign status has allowed tribes to straddle the fence between development and environmental concerns.

While the federal government has not yet embraced comprehensive policies that support Indian self-determination, land use policies are changing. The current generation of Indians is better educated than its forefathers were, and is acquiring the legal and business skills needed to protect its interests from non-Indian developers. Independent studies and pooled resources have become standard tools of this more sophisticated Indian advocacy. Tribal initiatives, bolstered by recent court decisions and congressional actions, have favored the sovereignty of Indian tribes, enhanced tribal authority over land use, and boosted tribal bargaining power with businesses. They have also benefited from the environmental and conservation movements that have pressured the federal government to halt the haphazard development of Indian land, an activity that was encouraged during the 1950s and 1960s. Taken together, these changes have given Indian tribes substantial, though not complete, control over the development of surface, subsurface, and water resources. In 1992 the BIA budgeted $155.6 million to manage these resources (figure 3).

Figure 3. Forestry receives over a fourth of the funds allocated to manage natural resources.



Source: Bureau of Indian Affairs, Division of Energy and Minerals.

Indian land held in trust by the federal government has three major ownership categories--tribal, single ownership of allotted land, and undivided interest heirship of allotted land. Tribal land, land owned by tribal government, is administered by tribal land committees or similar organizations in conjunction with BIA oversight. These lands constitute the major source of income for many tribes. Allotted lands are plots of trust land taken from tribal ownership and granted to individuals under allotment acts. About 10 million acres of land are in this category--nearly a fifth of reservation land. These lands can have single owners or multiple owners--undivided interest heirship. Undivided interest heirship land arose from the passage of ownership from an original allottee to his or her heirs. Each heir has a real property interest in the land. The majority of allotted land are undivided interest heirship.

Surface Resources. Farming, timber, grazing, and industrial leasing generate a majority of income for most tribes. Agriculture is the dominant use of Indian land as well as the major occupation for reservation Indians. In 1989, 75 percent of Indian land was used for farming and ranching. The BIA estimated that some 34,000 Indians on or near reservations work in commercial agricultural businesses while another 45,000 are subsistence farmers.[9] Income from leased land was the prime source of non-federal income for tribal governments. In 1988 (the most recent data available) the estimated value of products grown on Indian land (excluding timber products) was $621 million.[10] Tribes with larger operations have established vertically integrated agribusinesses. Examples include meat packing plants and hydroponic green houses.

For various reasons, farming as a source of reservation and individual income is rapidly decreasing. The BIA manages the leased land, most of which is undivided interest heirship allotments. Leases are limited to 5-years and are non-renewable. By comparison, leases for farmland outside federal jurisdiction are usually 10 to 20 years with an option to renew. This allows leasers time to acquire equity in the land. In addition, the BIA will not lease Indian land below an often inflated federal appraisal rate. In 1992, as a result, more than a million acres remained idle.

A declining percentage of trust land is farmed or ranched by them. Almost two-thirds of Indian owned farmland and 15 percent of grazing land is operated by

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[9]Testimony by Robert L. Miller, President of the Intertribal Agricultural Council, before the U.S. Congress, Senate Select Committee on Indian Affairs, Hearings on Indian Agriculture, November 2, 1989.

[10]U.S. Department of the Interior, Bureau of Indian Affairs, Natural Resource Information System, Inventory and Production Report, Report No. 55-38, August 30, 1991, p. 4.

non-Indians who, in 1988, garnered $431 million out of the $621 million worth of products grown on Indian land. Indians are more apt to spend their income on reservations, while the income of non-Indians who operate Indian land is more likely to be spent elsewhere.[11]

Farming and ranching ventures receive little technical and financial assistance from the BIA and tribal governments because they are long-term and capital intensive. Most reservation Indians do not have access to traditional lending institutions for financial assistance since few are located on reservations. These institutions are also loath to make farm loans on reservations because the land cannot be used as collateral. The lack of available farming credit is a serious obstacle to successful agricultural enterprises.

These circumstances have made the BIA and the Department of Agriculture the last resort--and in most cases the only--lenders for Indian farmers. Since farming is a long-term venture and small farmers have few if any employees, the probability of receiving a BIA loan is small. Newer and high profile projects eclipse BIA investments in agriculture. For this reason, the Farmers Home Administration (FmHA) in the Department of Agriculture is the largest holder of Indian agricultural loans.[12]

A lack of adequate irrigation also plagues Indian

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[11]Testimony of Ross Racine of the Intertribal Agricultural Council, U.S. Congress, Joint hearing by Senate Select Committee on Indian Affairs and House Interior and Insular Affairs Committee, September 22, 1992.

[12]National Indian Agricultural Working Group, "Final Findings and Recommendations," prepared for the Assistant Secretary of Indian Affairs and the Intertribal Agriculture Council, December 1987, p. 41.

farmers. When tribes signed the treaties relocating them to reservations, the federal government promised to fund water projects that would improve the productivity of the land. The government has proceeded sparingly in funding irrigation projects on reservations while it subsidized irrigation projects on arid non-reservation areas. For example, in 1962 Congress authorized the construction of the Navajo Indian Irrigation Project (NIIP), which was to deliver more than 500,000 acre-feet of water to Indian farmers to compensate for the construction of a diversion and storage project for non-Indians. The project benefiting non-Indians was completed on schedule, but the NIIP project remains unfinished. While the Indian land remains barren water is diverted for non-Indian uses.

One of the most successful Indian farming enterprises is the Ak-Chin community farm, located 35 miles south of Phoenix. The tribe (population 600) operates a high-tech agribusiness with 10,000 developed acres and plans to add another 6,000 acres. The farm has an annual operating budget of $5 million and provides jobs to 80 percent of the reservation's population. The BIA estimated reservation unemployment at 5 percent in January of 1991. By all accounts the farm has made the community self-reliant. In 1987 (the latest year available) the BIA supplemented the tribe's income with a mere $22,000. The government's fulfillment of its 1912 promise to deliver between 80,000-100,000 acre-feet of water and a $40 million settlement made the successful development possible. By connecting the tribe to a government built water delivery system in Arizona, the tribe has been able to get the water it needs.[13]

In the hope of resolving some of the more intractable problems of reservation agriculture, Congress is currently considering altering BIA's role in managing Indian farmland. It proposed to enhance the capabilities

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[13]Robert H. White, Tribal Assets: The Rebirth of Native America (New York: Henry Holt and Company, 1990), pp. 141-187.

of Indian farmers and ranchers by granting tribal governments greater authority to manage and regulate their land. In 1992 the Senate Select Committee on Indian Affairs favored legislation that would have extended the lease period to at least 10 years, provided preference leasing for Indians, and allowed the leasing of land at below market value if it would otherwise remain idle. The session ended before any action was taken.

Indian land contains nearly 6 million acres of commercial timberland capable of producing sustained timber production without irreparable damage to the forests.[14] In 1991 Indian timber sales amounted to $91.3 million. Approximately 200 tribes produce timber; however, the 10 tribes with the largest yields accounted for 86 percent of all Indian timber sales.[15]

Prior to the Self-determination Act of 1975, BIA's policy goal was to maximize sustainable timber harvests. Since the passage of the 1975 act, the BIA has accommodated tribal harvesting preferences. Traditional values have led some tribes to harvest only dead or decaying trees and preserve specific foliage within the forests.[16] These preferences allow tribes to preserve tribal customs but reduce revenue.

Leasing land for industrial purposes, particularly waste disposal or the storage of radioactive materials, is

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[14]U.S. General Accounting Office, Indian Programs: Use of Forest Development Funds Should be Based on Current Priorities (Washington: General Accounting Office, March 1991), p. 8.

[15]Bureau of Indian Affairs, Office of Trust and Economic Development.

[16]General Accounting Office, Indian Programs: Use of Forest Development Funds Should be Based on Current Priorities (Washington: General Accounting Office, March 1991).

a controversial income source for a few tribes. Waste management companies have targeted sparsely populated stretches of reservations for waste disposal facilities. The Department of Energy has also viewed reservations as potential sites for the storage of radioactive waste. The lack of applicable state and federal environmental regulations make reservations more alluring than comparable rural areas. Extreme poverty and few alternative economic opportunities have induced some tribes to overlook traditional values about the sanctity of land and acquiesce to housing toxic materials.

The debate over using tribal lands for waste disposal has been a source of continuing controversy on an increasing number of reservations. At the Rosebud Sioux reservation (SD/ND), tribal elections centered on the issue.[17] The Campo Indians (CA) have opted for jobs and industrial development; their reservation is soon to be the sight of a 600 acre land fill. The Kaibab Band of Paiutes (AZ) have accepted a large hazardous waste incinerator on their reservation. Over the protests of the state, the Mescalero Apache tribe (NM) has agreed to an Energy Department funded feasibility study for housing spent radioactive fuel. These tribes are the exception; the majority remain opposed to using their land as waste receptacles.

Subsurface resources. For the small number of reservations with mineral resources, the potential for income and employment from mining is significant. Until recently, however, Indians did not receive the royalties due to them from developed mines and wells because of fraud and abuse by business interests and federal agencies. Congress initially acknowledged these problems and, in 1938, enacted the Indian Mineral Leasing Act. By placing constraints on the selling and leasing of Indian minerals, the act was supposed to ensure that Indians

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[17]Lauren Ina, "Sioux Debate Whether to Use 'Mother Earth' for Waste Dump," The Washington Post, August 24, 1991, p. A-3.

received fair prices for leases and sales of minerals found on their reservations. In practice, the act had little effect on securing the payment of fair market prices. More recently it constricted the ability of tribes to lease their land and sell their minerals.

The energy boom of the 1970s induced Congress to give tribes more latitude in developing their energy resources. A 1982 law freed Indians to pursue development plans of their own design and to enter into joint ventures, and it released the federal government from liability for bad business decisions. Tribes now face the risk of financial loss without federal accountability, but they also have the ability to reap greater financial rewards. The law is an application of a self-determination policy. It has afforded tribes the opportunity to direct and plan the development and extraction its mineral resources without federal oversight.

Subsurface minerals currently being developed on reservations are oil, gas, coal, copper, limestone, phosphate, sand, and gravel. Uranium was mined on reservations from the 1940s through the 1970s. Oil and gas are currently the largest revenue producing minerals. Twenty-three tribes had producing leases in 1992. Their income ranged from $16 million for the Navajos to the under $1,000 for the Panca.[18] The Navajo, Hopi, and Crow tribes mine coal, the Tohono O'Odham mine copper, and some 35-40 tribes produce sand and gravel.

Income from minerals is proprietary, but a BIA estimate of Indian royalties from mineral production in 1989 was $122 million. This total excludes bonuses, fees from non-producing leases, and Osage income. (The Osage manage their land and revenue, so their income is not included in BIA totals.) Individual and joint owners

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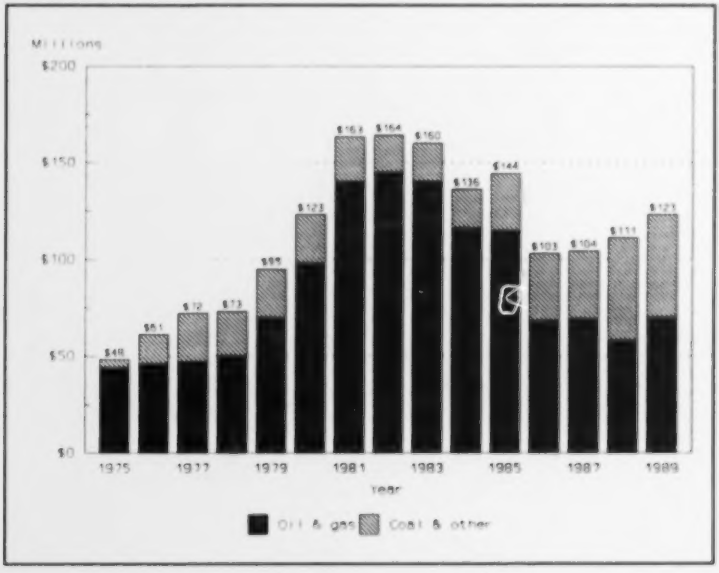
[18]U.S. Department of the Interior, Minerals Management Services, Royalty Management Program, "Monthly Activity Report," September 1992, p. 28; U.S. Census Bureau CB91-232.

of allotted land received one-third of this revenue. The federal government, as the guardian of these lands, manages over 300,000 individual trust accounts. Income from oil and gas peaked in the early 1980s and has declined over the past decade as prices have fallen. During the same period coal production has increased (figure 4).

Figure 4. Income from oil and gas decreased during the 1980s while coal revenues increased.



Source: Bureau of Indian Affairs, Division of Energy and Minerals.

Tribal usage of mineral revenues varies. In some cases royalties augment funding for tribal projects, including the improvement and construction of roads, hospitals, and schools. Many tribes pay cash dividends to their members. Two decades ago the Jicarilla Apaches (NM) began investing 15 percent of their royalties from oil and gas. In 1991 the estimated value of the tribe's portfolio was over $200 million. This income is dedicated to the provision of social services for members, the

payment of annual dividends, and college scholarships.[19]

The reduction in production of mineral resources on reservations reflects domestic and foreign market forces. The decline in oil, gas, and coal prices, along with renewed concern about the impact of drilling, has caused declines in both exploration activities and the opening of new wells on reservations. Base metal and radioactive material production in third world countries, where labor costs and environmental and safety standards are lax or nonexistent, is significantly cheaper than in the U.S.

Lack of adequate information about the potential of minerals on reservations hinders their development. The staffing and funding of BIA's minerals department are adequate to conduct geological, environmental, and feasibility studies for only a few parcels of land. The energy and mines division received a meager $5.7 million for its tasks. Even when geological and environmental studies are completed, tribes may lack the technical personnel to evaluate the data. In 1989 only 31 post graduate and 63 bachelor's degrees were awarded to Indians in physical sciences. Because of past transgressions by governmental agencies, tribes are reluctant to negotiate leases based on government and industry information. As a result, tribes often opt against development until they can obtain reliable outside consultation. To bolster tribal expertise in negotiating mineral leases in the 1970s the government provides funds for the establishment of the Council of Energy Resources Tribes, which continues to receive federal assistance today.

Another problem energy producing tribes have experienced is the stealing of oil and gas by contractors. According to an oversight investigation by a Select Senate Committee, industry employees have willfully under-represented or failed to report the quantity and quality of

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[19]Marjane Ambler, "Settling Accounts," Across the Board, June 1991, p. 49.

the minerals they extracted.[20] Tribes possess neither the personnel nor the resources to guard their wells and mines.

Poor accounting and mismanagement of royalties by federal agencies has resulted in significant revenue losses by tribes and individuals. Independent federal audits revealed that some Indian accounts have not been balanced for decades. Several congressional reports concluded that the mishandling of Indian funds by the Interior Department and BIA demonstrates their inability or lack of interest in fulfilling the government's fiduciary responsibility for administering Indian land royalties.[21]

The failure of the federal government to effectively manage royalties has prompted several tribes to create their own accounting systems or hire outside accounting firms. Self-auditing has proved cost effective for some. In 1987 the Jicarilla Apache (NM) spent about $70,000 to audit tribal books. In a four month period the audit added $500,000 to tribal revenue.[22] Beyond raising their income, Indian management of royalties expands their knowledge of the energy business and the laws governing royalty payments.

The flip side of tribal governments managing tribal

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[20]U.S. Congress, Senate Select Committee on Indian Affairs, Final Report and Legislative Recommendations: A New Federalism for American Indians (Washington: Government Printing Office, November 20, 1989), Report 105-153, pp. 105-153.

[21]U.S. Congress, Senate Committee on Government Operations, "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund," April 1, 1992.

[22]Marjane Amber, Breaking the Iron Bonds: Indian Control of Energy Development (Lawrence, KS: University Press of Kansas, 1990), pp. 138-140.

royalties is the opportunities it creates for fraud, abuse, and mismanagement. Many tribal governments lack the experience and skills needed to manage large portfolios. The experience of Utah Navajos is an example. Within a 15 year period a for-profit company, created to administer and spend revenue from their oil deposits, lost $12 million. A belated state audit revealed that company officials were guilty of mismanagement, bribes, kickbacks, and skimming.[23]

Water Rights. In 1908 the Supreme Court, in what became known as the Winters Doctrine, ruled that Indian water rights took precedence over settlers' claims. The "first in time, first in right" rule meant that Indians had first right to the water since reservations were placed in previously unsettled areas. Federal agencies failed, however, to enforce the ruling, and infringements met little resistance because Indians lacked the political clout or resources to challenge business or government actions. The 1908 decision was qualified in 1963, when the Supreme Court ruled that water rights should be based on the amount of reservation land that could be irrigated, and allowed non-Indians to use the "excess," even though tribes needed it for fishing and related activities.

In the 1980s, tribes won several law suits that restored their water rights, but at exorbitant costs. The Wind River tribes have spent $9 million in a legal defense of their water rights. The BIA spent an additional $1.9 million, and Wyoming estimated that its litigation costs amounted to $15 million. In 1988 the Supreme Court ruled in favor of the tribes, giving them rights to almost half of eastern Wyoming's water.[24] This and other federal court rulings favoring Indians has led other states to consider Indian water rights when developing or

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[23]Jerry Spangler, "Trust-fund Crisis has Deep Roots in Navajo History," Desert News, November 17, 1991, p. A1.

[24]"Dance with Lawyers," The Economist, August 10, 1991, pp. 18-19.

expanding commercial and residential areas.

A dispute currently underway between Indian tribes and a coal company illustrates the conflicting interests encountered by government agencies. Approximately 1.5 billion gallons of drinking quality water from the Navajo's aquifer are used each year to slurry coal from the Hopi reservation, located within the Navajo reservation, to Nevada. While the coal company is a major employer of Navajos and pays the Hopis annual royalties of $10 million, both tribes oppose a proposed expansion of the slurry because of recent reductions in water supply levels in and around the aquifer. A controversial impact study by Interior Department's Office of Surface Mining concluded that the slurrying activities were not responsible for water loss and advocated expansion of mining activities. The controversy remains unresolved pending further feasibility studies.[25]

Currently 50 major ongoing Indian water rights disputes are being contested in the West, and their outcomes will affect future development on reservations and in non-Indian communities. Financial concerns are prompting state and tribal governments to negotiate, rather than litigate over many of these water rights. To date, the majority of water rights settlements have been through negotiations. Tribes have benefited from this arrangement by trading their water rights for money to build irrigation systems and dams.[26]

Lack of Consensus. During the past two decades tribes have been waging successful legal battles with state

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[25]George Harden, "Indians Blame Mines for Water Loss," The Los Angeles Times, July 2, 1990, p. A17; John Lancaster, "Indians Win a Round on Water, The Washington Post, July 12, 1990, p. A21.

[26]Robert Tomsho, "States, Indians Seek Settlement of Water Issues," The Wall Street Journal, November 25, 1992, p. B1.

and federal governments over the control and use of Indian land, minerals, and water. Claiming sovereignty based on historic treaties with the federal government, tribes are slowly gaining the right to manage and develop their land and water resources. There is, however, no agreement among Indians over how their resources should be used and who should benefit. Intra-tribal rivalry over the use of land continues. Traditionalists oppose using land for some types of economic development, even at the cost of high unemployment. Others are willing to commit their lands for garbage dumps if doing so promises jobs. In several instances the disputes have ended in blood shed. The intra-tribal feuds arising from disagreements over optimal land use impede economic development.

Federal management of tribal assets has prolonged and intensified Indian dependency. Further, federal agencies have been negligent guardians of Indian land and revenue. Powerless to oppose the mismanagement of their land resources and the revenue they generated, Indians' dependence on the government increased. Changes over the past two decades have modified this relationship. Tribes can, if they so choose, accept control over their resources and the related profits and failures. The transfer of jurisdiction from federal agencies to tribal governments has been slow, however, because both federal and tribal bureaucracies are leery of change. The Interior Department does not want to relinquish control, and many tribal governments are ill-prepared to accept it.

Federal Economic Development Programs

Trust responsibilities and control of Indian assets commit the government to offer economic assistance to tribes. To fulfill these responsibilities, the federal government sponsors several economic assistance programs targeted specifically at reservations. In addition, tribes may also utilize federally-funded economic development programs offered to labor-surplus areas and minorities. Tribal businesses on reservations are also eligible for government assistance, though support in this area has been half-hearted at best.

Tribal governments became eligible to participate in the economic development initiatives during the 1960s. The Area Redevelopment Administration and its successor, the Economic Development Administration, were among the first federal agencies to place tribal governments on par with state and local governments as sponsors of economic development initiatives and recipients of funds. In 1992 two federal departments funded most of the economic development efforts on reservations.

Agency	(in millions)
Department of Interior, BIA	$ 24.2
Direct loan program	4.0
Guaranty loan program	9.4
Business development grants	6.9
Other	5.9
Department of Commerce	7.1
Economic Development Admin.[1]	5.6
Minority Business Development Agency	1.5

[1] Grants awarded for first 10 months of FY 1992

The BIA is the major source of economic development assistance on reservations. To qualify for help, applicants are required to demonstrate an inability to secure loans from conventional lending institutions, making the government the lender of last resort and funder of high-risk ventures.

The BIA offers direct loans and loan guarantees. The direct loan program is a revolving fund for tribes and individual Indians. It guarantees loans made by private and commercial lenders for up to 90 percent of the principle and interest. Eligible borrowers are tribes, tribal members, and Indian-owned businesses. While loan guarantees enable Indian businesses to utilize conventional lending institutions, these loans are often the first to be foreclosed. Because all but 10 percent of these

loans are secured by the government, lenders have little incentive to work with individual borrowers to help them restructure loans and survive difficult times.[27] A grant program which provided equity capital via grants to Indian entrepreneurs was terminated in 1992.

Indian tribes and individuals have invested the loans and grants in a variety of enterprises including tourism, fast-food stores, fish farms, and convenience stores. During the decade ending in 1992, the BIA had administered $260 million in direct loans and $469.6 million in guaranteed loans. Considering that the agency funded risky ventures, it is not surprising that the program suffered defaults. In 10 years the BIA cancelled 14.4 percent of its direct loans and 2.5 percent of its guaranteed loans. Another 12.5 percent of the guaranteed loans are in default. Almost 46 percent of direct loans have been collected while 24 percent of the guaranteed loans have been modified or paid off. The Economic Development Administration added marginally to economic development efforts by providing funds to 56 tribal governments for feasibility studies and market analyses.

A joint tribal and Interior Department task force recommended the establishment of enterprise zones on reservations to boost economic development. Designated blighted areas--enterprise zones--qualify businesses located in these areas to receive tax breaks. Critics argue that the establishment of enterprise zones in urban areas is a zero sum game because preferential treatment for one area adversely affects neighboring areas. This argument might not be applicable to reservations, where competing neighboring businesses may not exist. In 1992 Congress authorized wage and investment tax credits to businesses locating on reservations, effectively making all reservations enterprise zones. President Bush pocket-

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[27]Testimony of Gerry Emm, Intertribal Agriculture Council, before the U.S. Congress, Senate Subcommittee on Agricultural Credit, February 8, 1990.

vetoed the bill because it contained revenue provisions that he opposed. President Clinton favors enterprise zone legislation, and the current (103rd) Congress is likely to enact a bill designating an undetermined number of reservations as enterprise zones.

Tax incentives, however, do not address the issue of untrained and marginally educated reservation residents. In the absence of measures that would address the skill enhancement of reservation work forces, the benefits of enterprise zones will remain elusive. Tribal employment rights ordinances often require businesses locating on a reservation to hire Indians. Since the quality of the work force is marginal, enterprise tax breaks may do little to encourage businesses to locate on reservations.

Private Investments

Investment capital for businesses is critical for economic development on reservations. While tribes may be able to generate some capital, they are unable to attract sufficient amounts to make more than marginal changes. In an attempt to diversify their economies, some tribes have used revenues from the sale of natural resources and gambling operations, and a few tribes, especially those on larger reservations, have used federal grants and loans to start companies or leverage capital for joint ventures with non-Indian investors. The Cherokee Nation (OK), the Mississippi Choctaws, the North Carolina Cherokees, and the Passamaquoddies (ME) appear to have attracted or developed profitable manufacturing plants on their reservations.

Tribal governments have focused on attracting large enterprises, as a means of creating jobs. The pursuit of these industries has often overshadowed the importance of small entrepreneurs, who provide reservation communities with basic services. Beyond being a source of income to their owners, individually run businesses--grocery stores, repair shops, laundromats, and beauty parlors--are the staple of any viable community.

These basic commercial services exert a long-term, stabilizing influence on reservation economies and are often more valuable to tribal economic health than single, large firms. In the absence of basic services, reservation residents purchase such needs in border towns, thereby removing income and job producing dollars from the community. On the Pine Ridge Reservation (SD/ND), located in the poorest county in the country, only 9 percent of the estimated $82 million reservation income was spent on the reservation.[28]

Diverse difficulties are associated with business start-ups. In addition to the typical challenges new businesses face, reservation based entrepreneurs are saddled with a shortage of venture capital and seed money. Private lending institutions are reluctant to make loans to reservation businesses because they lack collateral. Small businesses, therefore, depend on their tribes and the federal government for assistance. Obtaining a loan or grant from the BIA is a slow process at best. Tribes may be hesitant or unwilling to assist budding entrepreneurs because they, like the BIA, would rather use scarce funds to attract businesses that provide multiple jobs than risk funding a few new small businesses. Favoritism and political rivalry among tribal members also hinder efficient business operations.[29]

Acquiring a land lease and the permits required to start a business on a reservation can take years. Red tape is generated by both tribal and federal bureaucracies. White business interests in border towns bent on preventing potential competition are also formidable foes. Once a business is running, the owner may be pressured by family, friends, and other tribal members to hire excess employees, hurting the business' chances to survive.

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[28]Daniel Cohen, "Tribal Enterprise," Atlantic Monthly, October 1989, pp. 32-40.

[29]Daniel Cohen, "Tribal Enterprise," Atlantic Monthly, October 1989, pp. 32-40.

There are few places where business owners on reservations can seek technical or managerial advice. Creation and survival of small businesses in Indian country is even more precarious than in the rest of the country.

The recent emergence of Indian operated institutions providing technical and financial assistance to reservation entrepreneurs is an encouraging sign. The Blackfeet tribe established an Indian owned bank in 1987. Other nonprofit institutions, such as the Seventh Generation, the Lakota Funds, and National Center for Indian Enterprise Development, provide limited seed money and technical assistance to small scale Indian enterprises typically run by families or partnerships.

Attracting significant non-Indian investments on reservations requires resourcefulness and the persistence of tribal leaders. A frequently cited example is the Mississippi Choctaws. Their efforts date back to a 1969 Economic Development Administration grant for a 30-acre industrial park. Almost 10 years later, with another loan from EDA and a $1 million loan guarantee by BIA, the Choctaws founded Chata Enterprises and moved it into their idle buildings. The Choctaws obtained another BIA loan guarantee to start one of its two joint ventures with non-Indian partners. By 1989 the three companies pumped $16 million into the region and employed 1,200 people, 30 percent of them were non-Indian.[30]

The Passamaquoddy tribe of Maine used the proceeds from a financial settlement claim against the state of Maine for a leveraged buy-out of a cement plant. Five years later the tribe sold the plant for $81.3 million, triple the purchased price. The Choctaws and Passamaquoddy have attracted investors to barren

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[30]Robert H. White, Tribal Assets (New York: Henry Holt and Company, 1990), pp. 55-115.

reservations, but such instances are few and far between.[31] While a few tribes have used federal loans to leverage support from outside investors, others have stumbled, as poor labor/management relations have forced plant closing and poor employee training and discipline have undermined operations.

During the 1970s and 1980s the government touted tourism as an economic development tool. The construction of government financed, tribally-run hotels and resorts proliferated on the more scenic reservations. The White Mountain Apaches currently operate one of the largest ski resorts in the Southwest. While tourist attractions provide jobs and tribal revenue, they do not necessarily create a stable and diversified economy. For example, the Picuris Indians in New Mexico are, with government assistance, part owners of a hotel located over 60 miles off their reservation. Only 10 of the establishment's 70 employees are Picuris, and the hotel management is non-Indians.[32] The benefits of hotel to the tribe are questionable.

Gambling

Gambling is proving to be a significant source of economic activity on Indian reservations. Originating with high-stakes bingo in the 1970s, casino gambling is a major factor in the economic vitalization of an increasing number of reservations. The Seminole tribe in Florida pioneered high-stakes bingo in the late 1970s. The tribe's success signaled an economic opportunity to other tribes, and gambling facilities on reservations grew. According to one estimate of the annual revenue from Indian casinos

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[31]Daniel Cohen, p. 32.

[32]Carmella M. Padilla, "Picuris Indians Acquire a Subsidized Stake in Hotel," The Wall Street Journal, September 13, 1991, p. B2.

is $6 billion.[33] The temptation to promote gambling on impoverished reservations is strong; it boosts tribal income and employment opportunities with little capital investment.

The Indian Gaming Regulatory Act of 1988 opened the door to legal casino gambling on reservations. The law allows a tribe to offer any type of gambling on its reservation, provided the state already permits gambling for other purposes, such as charitable fund raisers. The act was a reaction to a 1987 Supreme Court ruling favoring tribal sovereignty over state regulations against gambling.[34] The court held that tribes could offer any high-stake gambling permitted in states and do so without state oversight. For specific types of gambling not legal in the state and casino style gambling--black jack, roulette, and craps--the 1988 law requires tribes and states to enter into compacts. In 1991, 175 tribes offered some form of gambling on their reservations including 152 bingo halls and 23 casinos.[35] Revenue from tribal gambling is tax free. The profits from gambling are invested in reservation hospitals, housing, schools, social welfare programs, tribal operations, and economic development ventures.

States tend to oppose gambling on reservations for three reasons: they cannot tax tribal gambling revenues; they have limited regulatory powers over the games; and they are concerned that gambling contributes to social ills.

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[33]Francis X. Clines, "With Casino Profits, Indian Tribes Thrive," The New York Times, January 31, 1993, p. A1.

[34]Paul Liberman, "Ladyluck Turns on Indians," The Los Angeles Times, October 6, 1991, p. A34; "Clearer Rules for Tribal Gambling," editorial The New York Times, March 23, 1993, p. A23.

[35]MN Planning, "High Stakes: Gambling in Minnesota" (St. Paul: MN Planning, March 1992), p. 13.

Local communities, in contrast, usually support Indian casinos because of the influx of jobs they bring.

The National Indian Gaming Commission, established by the 1988 act to provide gaming guidelines and regulations, took almost four years to issue its first regulation. During that hiatus, many tribes bought electronic gambling devices assuming that they were legal. The commission, however, ruled that most electronic gambling aids required state approval and left the legality of the gambling machines to be decided in court.

The largest concentration of Indian gaming is located in Minnesota. It is home to 13 of the country's 23 Indian operated casinos. The relatively good relationship between the state and tribal governments, along with stable tribal leadership, enabled the state and tribes to work cooperatively. The tribes and the state negotiated the compacts prescribed by the 1988 act without litigation.

A study sponsored by the state of Minnesota concluded that the short-term effects of casinos have been positive. The majority of the casino proceeds have been expended on public works programs and used as development capital. In 1991 nearly 5,800 people were employed by tribal casinos, and that number is projected to double by 1994. More than a fourth of those employed are Indian. A detailed impact study of one casino, Jackpot Junction, found that 15 new homes were built on reservations and local wages rose to compete with the $5-$8 hourly rates offered at the casino. Property values also increased as employees and entrepreneurs purchased land near the casino. The number on general assistance decreased by 20 persons, and AFDC cases dropped from 18 to three.[36]

The clash between Connecticut and the Mashantucket Pequot Indians represents a more typical

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[36]MN Planning, "High Stakes: Gambling in Minnesota" (St. Paul: MN Planning, March 1992), pp. 32, 40.

situation. In February 1992 the Pequot tribe opened a casino despite state objections. The tribe maintains control of the casino, its design, construction, and management, but because it could find no domestic financing, the tribe turned to Asian investors who became partners.[37] The venture has been so successful that the tribe is scheduled to expand operations. In California and Arizona, where most forms of gambling are illegal, the states have yet to negotiate arrangements for tribal gambling facilities. Washington state has negotiated a compact with only one of the eight tribes wishing to open casinos.

The short-term results for Minnesota and Connecticut reservations have been encouraging, but the long-term effects of gambling remain uncertain. In states that respond by permitting state-wide gambling, reservations may face a drop in market share and reduced income. Charges of involvement by organized crime in Indian gambling in the Southwest states have already received media attention, but a Justice Department investigation was unable to substantiate such claims.[38] If the concerns of social ills surrounding gambling materialize, there may be a backlash against gambling on reservations. Currently, however, gambling appears to be a major new income source for a number of tribes as well as contiguous areas, and the income, if it persists and is invested soundly, may help some tribes to achieve self-sufficiency.

Economic Growth

Most reservations have little to attract business investments. Limited resources, shortage of capital,

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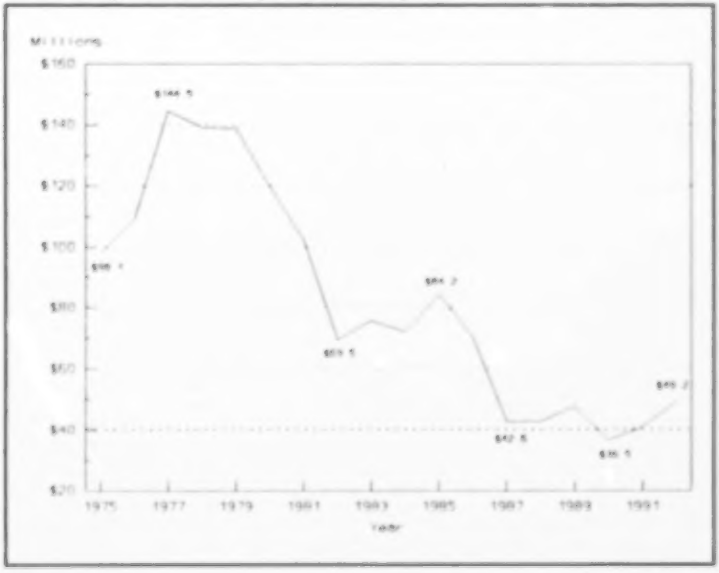
[37]Kirk Johnson, "Betting, in Harmony with Nature," The New York Times, January 29, 1992, p. B1.

[38]Paul Lieberman, "How the Mafia Targeted Tribe's Gambling Business," The Los Angeles Times, October 7, 1991, p. A1.

underdeveloped infrastructures, and lack of trained work forces and ambiguous regulatory codes characterize reservation economies. Government funding could help, but during the past decade, Congress cut funds for economic development (figure 5). If the Clinton administration and Congress decide to reverse the neglect and increase funding of economic development on reservations, the beneficiaries should be tribes that have demonstrated capabilities for self-governance. The BIA should also alter its current financial assistance program to better assist the needs of individual or family entrepreneurs.

Figure 5. Since 1977 funds for economic development have decreased by two-thirds (1990 dollars).



Source: U.S. Congress, Senate Select Committee on Indian Affairs, "Budget Views and Estimates for Fiscal Year 1992" (Washington: U.S. Government Printing Office, 1991), p. 67.

Tribal governmental structures are fairly new and have been afforded little authority until recently. Many lack the experience needed to deal with the federal bureaucracy, attract outside investment, and efficiently

manage tribal enterprises. Many tribal governments cannot effectively maneuver the often cumbersome red tape of the federal government. Only a few tribes have managed to successfully tap the economic development programs offered by federal agencies.

Tribes are also culpable for impeding economic development on their reservations. In addition to the lack of consensus about the means of achieving economic development, a major obstacle to economic growth on reservations is their loose regulatory environment. The sovereign status of tribal governments effectively blocks the enforcement of state and federal regulations of businesses on reservations. Many tribes have yet to create legislation and courts governing business practices, leaving outside investors with ambiguous rules to follow and few places to receive guidance. Without independent courts and enforceable laws, businesses cannot be assured that their contracts will remain valid and commercial codes will be honored by a new tribal administration. When daily business decisions can be affected by tribal politics, outside investors will go elsewhere. Unstable and ineffective leadership reinforces the perceived investment risks and discourages potential investors.

Tribally-owned businesses are the product of the unique status of tribal governments and their ownership of tribal trust lands. Some have provided tribes substantial income and jobs to members, while others have been plagued by mixing daily operations with political patronage. These problems are especially acute on reservations where clan rivalries persist. Political winners reward supporters with jobs in the government and in the tribal businesses--often the only major employers on reservations. The patronage system often disrupts, if not ruins, business operations, and is detrimental to exercising effective governance.

To establish a favorable environment for businesses to prosper, tribal governments should avoid micromanaging tribal enterprises. To rectify some of these problems, tribes might waive their claimed rights as

sovereign nations and adopt the laws that regulate businesses off reservations.[11] This would require tribal governments to determine whether potential economic development is worth relinquishing some treaty rights.

Human Resources

Only a few tribes can realistically anticipate that effective and sustained development of their natural resources might lead to economic self-sufficiency. To that end they will need to expand and improve the quality of their educational and training facilities.

Education

The majority of Indian students residing on or near reservations attend public schools. Since 1980 enrollment in BIA funded schools has remained stable, while the school-age population increased. In 1992 these schools enrolled 41,000 students.

Treaties and trust responsibilities require the federal government to educate Indians on reservations. The government's efforts failed not only because of inadequate funding, but also because of the flawed educational philosophy that has characterized the federal educational system on reservations. Initially federal and missionary schools were intent on "civilizing" Indian children, using schools as assimilation instruments. The practice of removing children from reservations and

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[11]Eric M. Rice "Doing Business: An Evaluation of Policy Alternatives to Encourage Private Enterprise on Indian Reservation," Report to the Native American Rights Fund, January 11, 1990, pp. 5 and 8.

forcing them to attend boarding schools was another manifestation of the misguided measures taken by the BIA. Lack of adequate preparation relegated reservation Indians, upon entering the labor force, to jobs requiring little education and training. Racial discrimination further hindered Indians climbing the economic ladder when opportunities were available.

In the early 1970s the government acknowledged that flawed educational programs were a major obstacle to tribes achieving self-sufficiency and a prime cause of reservation destitution and poverty. A succession of legislative enactments attempted to rectify these past wrongs, and laid the groundwork for advancing tribal control of educational facilities on reservations. The 1972 Indian Education Act provided funds for integrating Indian history and culturally relevant programs into school curricula as well as setting minimum health, safety, and academic standards for federally-funded Indian schools. The 1975 Education and Self-Determination Act authorized tribes to contract for the management of BIA run schools. In 1978 Congress authorized funding for tribally-controlled community colleges. A decade later, it reaffirmed the role of tribal governments in educating Indian children by transferring jurisdiction for Head Start and other early childhood development programs to tribal governments.[40] While these efforts were aimed at improving the educational achievement of Indian students, the underlying hope was that, with an educated work force, reservation economies might become more productive. If reservation economies did not flourish, policymakers reasoned, residents would be able to compete for jobs elsewhere.

Progress has been slow, yet the past two decades have witnessed noticeable changes in the management, operation, and curricula of Indian schools. Tribes have

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[40]Melody L. McCoy, "The Role of Tribal Governments in Education Policy: A Concept Paper," Prepared for the National Indian Policy Center, October 15, 1991, pp. 2-9.

developed new curricula that incorporate Indian culture, language, and history. Public schools with large percentages of Indian children are now more sensitive to the unique needs of Indian children. Yet Indian educational attainment and achievement levels remain well below the rest of the country. In 1990, 46.2 percent of Indians over 25 living on reservations had obtained a high school degree or G.E.D., compared to 85 percent for the nation.

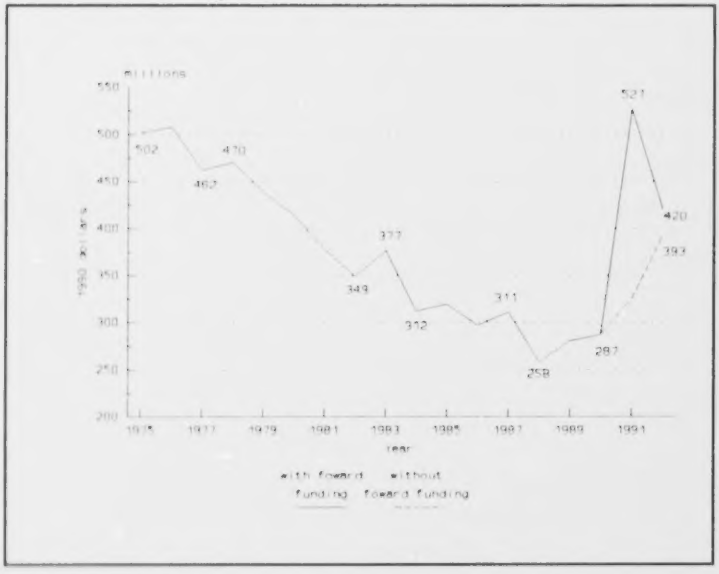
Federal Programs. The BIA and the federal Education Department (ED) are the two major funding sources of Indian education. In fiscal 1992 the two agencies spent $829.1 million educating Indians--mostly on and near reservations.

Program	1992 funding (millions)
Bureau of Indian Affairs	$420.4
School operations	321.2
Johnson O'Malley	23.6
Continuing education	36.8
Program management	4.4
Tribe/agency operation	34.4
Department of Education	$406.9
Chapter 1	35.7
Impact aid	258.0
Indian Education Act	73.4
Special education	26.5
Drug free schools	5.7
Science and math	1.3
Rehabilitative services	4.5
Library services	1.8

Adjusted for inflation, the BIA outlays for education decreased between 1975-1988 but have been rising since then (figure 6). School operations funds support the administration and maintenance of BIA and tribally-administered schools, as well as solo parent, handicapped, substance and alcohol abuse programs, and student transportation, which constitutes a major expense

on sparsely populated reservations.

Figure 6. BIA's education budget declined during the 1980s (in constant 1990 dollars).



Source: U.S. Congress, Senate Select Committee on Indian Affairs, "Budget Views and Estimates for FY 1992," March 1991, p. 87.

Funds allocated for the Johnson O'Malley program are used to supplement educational programs for Indian students in public schools and meet the special needs of 3 and 4 year old Indian children. The continuing education program provides financial assistance to tribally-run post-secondary schools and financial aid to Indian students attending other accredited post-secondary schools, including graduate and adult educational programs.

The 1975 Self-Determination and Education Act presented tribally-operated schools as an alternative to schools administered by state or federal governments. In tribally-run schools, also known as contract or grant

schools, tribes assume responsibility for school management and operations. Once a tribe contracts with BIA, it is able to control the curriculum, teacher hiring, and overall administration.

In 1992 BIA was responsible for the education of nearly 41,000 students, almost 17,000 of whom lived at and attended reservation boarding schools. These boarding schools house students who live too far from school facilities for daily commuting to be practical, children with discipline problems, and those whose parents are unable to care for them. Of the 166 BIA funded schools, 74 were operated and managed by tribes under contract.

A 1991 audit of BIA schools by the Interior Department inspector general's office revealed that the BIA was deficient in implementing its mandates.[41] An on-site inspection of several schools found physical conditions "so deplorable as to impede the education process." The audit singled out the lack of stable management (17 directors during its 12 years) as a major factor contributing to BIA's failure to provide effective administration and oversight of its programs.

The Education Department (ED) subsidizes state, local, and tribal Indian educational efforts. In 1972 Congress had authorized the ED to provide ongoing grants to local educational agencies (Less) serving Indians and tribally-administered schools, to fund programs for Indian students and adults, and to supplement administrative costs. The department's outlays for these programs decreased from a high of $120 million in 1979, to just over $70 million in 1992 (both in 1990 dollars). The ED estimates that 17,500 Indian students participated in these programs in 1992.

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[41]Office of Inspector General, "Implementation of the Education Amendments of 1978, Bureau of Indian Affairs," Report No. 91-I-941 (Washington: U.S. Department of the Interior, 1991), pp. 4-5.

The ED funds several other programs targeting Indians, though not necessarily on reservations. Under Chapter 1, the ED directly transfers funds to the BIA for use in BIA and tribally-operated schools. Impact aid grants compensate school districts for the cost of educating children who reside on Indian lands but attend public schools, and for the construction and repair of school facilities. Beyond these targeted programs, Indians are, of course, eligible to participate in other federally-funded programs.

Attainment and Achievement. Indians have a high dropout rate, and the educational achievement of Indian students remains below national averages. A 1980 follow-up study of 10th graders found that nationally, 36 percent of Indian youths did not complete high school, compared with 28 percent of Hispanics, 22 percent of Blacks, and 15 percent of whites.[42] (Separate reservation data are not available.) Because Indian children are more likely to dropout at an earlier age than other ethnic groups, studies incorporating students from lower grades estimate that half of school-age Indians leave school prior to graduation.[43]

The educational achievements are even more discouraging. Students who remain in school fall behind their peers. Indian students nationally consistently score lower on achievement tests than the total U.S. population, but higher than the black population.[44]

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[42]U.S. Department of Education, "Indian Nations at Risk: An Educational Strategy for Action" (Washington: U.S. Department of Education, October 1991), p. 7.

[43]M. Sandra Reeves, "The High Cost of Endurance," Education Week--Special Report, August 2, 1989, p. 2.

[44]National Advisory Council on Indian Education, Towards the Year 2000: Listening to the Voice of Native America, 17th Annual Report to the U.S. Congress, 1990, pp. 84-85.

	1990 mean SAT scores	
	verbal	math
Total Population	424	476
Indian	388	437
White	442	491
Black	352	385

In 1988 a national study of achievements in mathematics among eighth graders indicated Indians performed below basic levels in larger percentages than other groups.[45]

	Percent performing below basic levels
Indians	32.3
Blacks	28.9
Hispanics	27.6
Whites	15.5

Five percent of Indian students performed at advanced levels while the majority performed at basic levels.

Standardized tests administered at BIA and tribal schools demonstrated that, on average, students on reservations in grades 2-12 performed between the 16th and 22nd percentile, far below the national average. Twelfth grade students attending these schools averaged between 7th and 9th grade levels in reading, math, and language.[46] It seems apparent that the flurry of legislation in the 1970s and the hundreds of millions of dollars spent on Indian education have yet to provide

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[45]U.S. Department of Education, "Indian Nations at Risk: An Educational Strategy for Action," p. 9.

[46]Bureau of Indian Affairs, "Report on BIA Education, Excellence in Indian Education Through the Effective School Process," Final review draft, March 1988, pp. 76-77.

most Indian children living on reservations with minimum basic skills.

Post-Secondary Education. Despite the high dropout rate and low levels of academic achievement, the total number of Indians attending post-secondary educational institutions is increasing. This may be due to increases in self-reporting. Women attending college accounted for most of the increase. Between 1978 and 1990 Indian female enrollment jumped from 41,000 to 60,000, while Indian male enrollment increased by only 6,000, from 37,000 to 43,000.[47] In 1990 a total of 103,000 Indian students (both reservation and non-reservation) attended post-secondary institutions. Forty-seven percent enrolled in four-year institutions and the balance in two-year institutions. Nearly one in ten Indians 25-years or older had completed 16 years of education, compared with 20.3 percent of the total population. Indians were even more underrepresented among graduate students. In 1988, 1,133 were awarded master's degrees, 84 received doctorates, and 268 received first professional degrees.[48]

The lack of educational achievement among post-high school reservation students is a long-standing problem. In the early 1970s the realization that reservation Indians were having difficulty on mainstream campuses prompted the creation of community colleges on reservations. Tribes currently operate 22 community colleges while the BIA manages the Haskell Indian Junior College and Southwestern Indian Polytechnic Institute.

The tribal community colleges are governed by

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[47]National Advisory Council on Indian Education, Indian Education: Whose Responsibility?, 18th Annual Report to the U.S. Congress, 1991, pp. 104-106.

[48]National Advisory Council on Indian Education, Towards the Year 2000: Listening to the Voice of Native America, pp. 81-82.

predominately Indian school boards. In 1991 BIA obligated $21.9 million to support these colleges. Funds are allocated on a per capita basis to participating tribes. The Navajo Community College garnered $6 million of these funds. In 1990 enrollment in these institutions (excluding the Navajo school) ranged from 66 to 477, with a total attendance of 5,000. In 1989, 569 students graduated from these schools (excluding Navajo). The Navajo college averaged 1,510 full and part-time students.

The tribal colleges have been grossly underfunded. In 1981 Congress authorized funding of up to $6,000 per student to promote post-secondary education for Indians, but budget cuts during the 1980s diminished the funding levels, hitting a low of just under $2,000 per student in 1988 but rising to $3,168 per student in 1991.[49] By comparison, public colleges spent $4,234 per student in 1991.

Tribal colleges can provide an essential service to Indians, but their full potential has yet to be realized. Eleven of the 22 tribal colleges are not accredited and only one awards bachelors' and masters' degrees. Dormitory overcrowding and dilapidated facilities are common problems at BIA operated schools.[50] To maximize their share of the funding, it has a been alleged that schools are enrolling more students than they can safely and effectively house and educate.[51] Reservation

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[49]Bobby Wright and William G. Tierney, "American Indians in Higher Education," Change, March/April 1991, p. 17.

[50]U.S. Department of the Interior, Office of Inspector General, "Audit Report: Implementation of the Education Amendments of 1978," Report No. 91-I-941, June 1991, p. 38.

[51]Dario F. Robertson and Becky L. Whitetree, "B.I.A.--Bureau of Ignorance and Abuse," The New York Times, November 23, 1989, p. A27.

community colleges fall short of providing effective post-secondary education, but they do provide additional preparation for work and post-secondary studies.

An Evolving Educational System. During the past two decades, Indian education on reservations has undergone two major changes, and a third is in the offing. The first is the out-migration of Indians from reservations to areas not served by the BIA, a shift that has increased the number of Indian students educated in public schools to 90 percent. These students accounted for at least one-fourth of the Indian-targeted federal educational assistance.

The second change is the increased role of tribal governments in educating reservation children. Tribal control of early childhood development programs and elementary and secondary schools provides an opportunity for tribes to improve the educational attainment and achievement of students. A frequently cited success story is the Zuni tribe's takeover of their school system. In 1979, the tribe created a reservation-wide school district. Prior to 1979, over 40 percent of school-age Zuni children had dropped out of school and high school graduates averaged 8th grade competence on basic skills tests. Ten years after the creation of the reservation district, the dropout rate had decreased dramatically and 34 percent of the graduates were college bound.[52] Bolstered by the Zuni experience, advocates argue that an educational system controlled and administered by Indians for Indians may be able to eliminate the educational deficiencies on other reservations.

Many tribes continue to reject proposals that would grant them total control of their schools. In 1987 the head of the BIA and the former chief of the Cherokee Nation in Oklahoma proposed that all BIA

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[52]Dennis McDonald, "From 'No Power' to Local Power?" Education Week--Special Report, August 2, 1989, p. 8.

schools be transferred to state or tribal jurisdiction. Concerned this would lead to termination of reservation status, 65 tribes and national Indian organizations protested. The plan was dropped. Many tribes do not yet possess the experience or managerial skills to operate a school system. Within the Indian community there is no consensus regarding optimal methods for educating Indian children. Some favor stressing culture and native language while others believe language and heritage should be taught at home and schools should focus on teaching basics.

Proliferation of computer and information technologies in education may significantly alter the delivery of educational services for reservations schools. With the aid of these technologies, Indian schools can augment their curricula and course offerings. Satellites, instructional television fixed services, and computer networks can expand educational opportunities by broadening the children's experiences beyond the reservation.[53] These technologies can help reservations tap into the wealth of information located off-reservations and compensate for isolation on reservations.

Other technologies, such as interactive video discs and hypertexts can improve student learning skills while enhancing cultural roots. The Zuni school, for example, uses computers to help its students learn their language and culture.[54]

The BIA and the ED are funding experimental

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[53]U.S. Congress, Office of Technology Assessment, Linking for Learning: A New Course for Education, OTA-SET-430 (Washington: Government Printing Office, November 1989).

[54]U.S. Congress, Office of Technology Assessment, Rural America at the Crossroads: Networking for the Future, OTA-TCT-471 (Washington: Government Printing Office, April 1991), p. 16.

projects to help reservation schools obtain and use new technologies. Most primary and secondary BIA funded schools are electronically connected to the Educational Native American Network (ENAN) as are most tribal colleges. The network's main node in Arizona connects schools and teachers, permitting them to share instructional strategies, make personnel contacts, and develop programs. Students are able to access educational programs from their home schools. Reestablishing communication systems among and within Indian tribes may strengthen Indian communities and improve the educational achievements of their children.

Training

Government training programs are not targeted to the special needs of Indians. The Jobs Training Partnership Act (JTPA) is the major federal program for training low income, deficiently educated, and unskilled individuals. In fiscal 1992 an estimated 39,900 Indians were enrolled in the various JTPA programs as follows:

Native American programs (Title IVA)	21,900
Summer youth program (Title IIB)	7,600
Adult and youth programs (Title IIA)	7,300
Job Corps (Title IVB)	2,000
Dislocated workers (Title III)	1,100

Congress mandated that an amount equal to 3.3 percent of adult and youth training appropriations be allocated to Native American program (Title IVA). In 1992 this amounted to $63 million. The 1990 breakdown by activity follows:

	1990 participants
Classroom training	8,200
On-the-job training	2,400
Work experience	5,000
Community service employment	1,500

The Department of Labor administers JTPA funds and is charged with monitoring programs on individual

projects. In recognizing their special needs, tribes and tribal organizations are given the flexibility to design programs that best meet the demands of each reservation.

In addition to JTPA, a handful of other programs fund Indian training. In fiscal 1991 the outlays for these efforts amounted to nearly $40 million. The BIA's employment assistance program offers adult vocational training ($18.6 million) and a direct employment program ($2.4 million).

Indians also participate in training not targeted to reservations. The law also requires that 1.25 percent of vocational education appropriations (Perkins Act), administered by the Education Department, be set-aside for grants to Indian tribes and organizations ($12.3 million). In addition, the ED granted $2.5 million to tribally-controlled post-secondary vocational institutions. Finally, the JOBS program, a component of the 1988 welfare reform legislation, offers AFDC recipients opportunities to participate in education, training, work experience, and support services. The goal of these programs is to increase employability of enrollees. In 1991, 76 tribal organization operated JOBS projects, receiving a total of $6.3 million.

To assist tribes in their administration and distribution of federal training funds, Congress enacted the Indian Employment, Training, and Related Services Demonstration Act of 1992. It authorizes tribes to consolidate the employment and training funds that emanate from federal agencies into a single program under a tribal plan. This should offer tribes greater flexibility in administering federal funds from varied spigots.

Current funding levels are sufficient to offer limited training to a small fraction of those in need. Sequential remedial education and training is required to enable Indians to compete for jobs. Currently, funds are inadequate to realize these needs. Even if only one of every four young Indian adults would seek training, such

a program would require quadrupling current appropriations.

Tribal Sovereignty

Tribal governments should be authorized to administer normal governmental functions, and the federal government should assist tribes in implementing these responsibilities. For over a century court decisions, congressional actions, and federal agencies sharply limited the authority of tribal governments to manage their affairs. Beginning in the late 1960s, changing societal attitudes toward the rights of minorities spilled into federal Indian policies. These changes have greatly affected the balance of power between tribes and the federal government. Control over the management of Indian resources and the administration of social programs on reservations is being passed on to tribes able to accept the responsibility and challenge. In other areas of governance, such as the authority to administer justice and levy taxes, the transfer of power has been extremely slow.

Administration of Justice

Executive agencies, Congress, and the courts have tended to disregard the rights of tribes to administer justice on their reservations. The Supreme Court ruled in the *Crow Dog* case (1883), involving an Indian who killed another Indian on a reservation, that the federal government did not have jurisdiction in Indian territory where the crime occurred. Congress counteracted the court's decision with the Major Crimes Act, which extended federal jurisdiction to reservations in instances of murder, manslaughter, rape, and other specified crimes.

Following the congressional action, the Supreme Court retreated from its 1883 position. With few exceptions, during the next century, the court undermined tribal authority. In *U.S. v. Kagama* (1886), the court ruled that treaty obligations were not applicable when tribes accepted the protection of the federal government, thus giving Congress plenary authority to legislate tribal affairs.[55] Treaties, in essence, made the federal government the guardian of tribes. In *Lone Wolf v. Hitcock* (1903), the court reasoned that as the guardian of tribes, the federal government was entitled to pass laws governing Indians even if it meant breaking treaties. These decisions swiftly stripped tribal authorities of their ability to administer justice and govern the affairs of their reservations.

In 1883 the BIA expanded the jurisdictional encroachment on tribal self-governance by creating the "court of Indian offenses," which enforced the Code of Federal Regulations (CFR) on Indian reservations. The CFR is a set of criminal and civil codes that reflect mainstream views of crime and punishment, and often disregards or even proscribes Indian religious practices. The proponents of Indian assimilation reasoned that if tribes were denied their culture and any semblance of self-governance, they would eventually adopt white ways.

In the 1950s termination of reservation status and cuts in funds led to a breakdown of social services and law enforcement on reservations. The federal government reacted by authorizing states to assume criminal and civil jurisdiction on reservations. Only five states--California, Minnesota, Nebraska, Oregon, and Wisconsin--exercised this option.

Since the 1960s many tribes have replaced the CFR with criminal codes designed to reflect their values

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[55]Sharon O'Brien, American Indian Tribal Governments (Norman, OK: University of Oklahoma Press), p. 73.

about justice. Nearly half of the federal tribes have established their own court systems, while fewer than one in 10 have retained the CFR and continue rely on judges appointed by the BIA. Some tribes reject the federal constitutional ban on separation of state and religion and have incorporated religious beliefs into their laws. Despite significant progress, fragmentation of legal authority on reservations continues to hinder the ability of tribes to effectively govern their reservations.

Jurisdiction over criminal cases on reservations depends on the type of crime, in which state it was committed, and whether the perpetrator was Indian, non-member Indian, or non-Indian. The federal government assumes authority on reservations when a crime listed under the Major Crimes Act has been committed regardless of the race of the perpetrator or victim. The Supreme Court ruling in *Oliphant v. Suquamish Tribe* (1978) gave states exclusive jurisdiction in cases where a non-Indian commits a crime on a reservation, regardless of the victim's race. This decision continues to infringe sharply upon tribal sovereignty by denying tribes the power to maintain law and order.

Tribal jurisdiction prevails only when a member commits a "non-major" crime or misdemeanor on the reservation. Who has jurisdiction when a non-tribal member commits a crime on a reservation is currently being contested in the courts pending congressional action. In the five states that assumed criminal and civil jurisdiction on reservations during the 1960s, states and tribal governments have concurrent jurisdiction.

Taxation

Indians living on reservations are required to pay federal income taxes except on income derived from individual allotments. Tribally-owned businesses operating on reservations also are exempt from federal taxation. States may not tax Indians living on reservations

or tribally-owned businesses located on reservations.[56]

Exercising their sovereign status, tribal governments have the authority to levy taxes on residents and businesses operating on their reservations. The Supreme Court's landmark decision in *Merrion v. Jicarilla Apache* (1982) reinforced tribal governments' right to impose severance taxes on non-Indian businesses operating on reservations, calling it an "essential attribute of Indian sovereignty."[57] In *Kerr-McGee Corp. v. Navajo Tribe* (1985) the court also upheld the authority of tribes to tax non-Indian business activity on their reservations, ruling that the Navajo value-added and property taxes were within the rights of tribal governments.

Until 1989, states did not possess the authority to regulate commerce on reservations or levy corporate or severance taxes on non-Indian businesses operating on reservations. It was deemed that such actions would violate of tribal sovereignty.[58] In *Montana v. United States* (1981) the Supreme Court let stand a circuit court decision that declared invalid a state-imposed 30 percent tax on coal mined from the Crow Reservation. In *White Mountain Apache Tribe v. Bracker* (1980), the Supreme Court reaffirmed this notion when it ruled that the state had no authority to tax timber operations on reservations. But in a more recent ruling, *Cotton Petroleum Corporation v. New Mexico* (1989), the Supreme Court allowed the

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[56]Daily Report for Executives, "Arguments Heard on Oklahoma Tax on Tribal Members," Bureau of National Affairs, March 3, 1993, pp. 9-11.

[57]Marjane Ambler, Breaking the Iron Bonds: Indian Control of Energy Development (Lawrence, KS: University Press, 1990), p. 197.

[58]Sharon O'Brien, American Indian Tribal Governments (Norman, OK: University of Oklahoma Press, 1989), pp. 284-285.

state to levy a tax on the extraction of reservation oil.[59] The court ruled that the state severance tax did not impose a grave injury on the tribe. The ruling also opened the door for states to tax businesses on reservations if they provided reservations with any services. This ruling challenged tribal sovereignty, and its full impact has yet to be determined.

Self-Governance

The self-determination policies of the 1970s and 1980s helped tribes gain control over federally funded education, health, and social welfare programs, but stopped short of granting tribal governments the flexibility to adapt programs to their needs. In 1988 Congress signaled a radical departure from previous policies by authorizing the Interior Department to bypass the BIA and provide block grants to 10 tribal governments.[60] The new approach may serve as a model for new Indian policy. The program--dubbed the self-governance project --is administered in three phases: research and planning, negotiation of financial and legal arrangements, and execution of the self-governance compact. To participate in the program a tribe must submit a comprehensive plan for assuming direct control over programs, services, and management duties currently exercised by the BIA. The plan should reflect internal priorities as well as tribally-preferred reallocation of resources. The planning phase lasts two years. Grants to the original 10 tribes amounted to $1 million in the first year and $1.2 million the following year.

Once a tribe formulates a plan, it negotiates with

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[59]M. Maureen Murphy, "Indian Tribal Government Civil Jurisdiction: Emerging Jurisprudence" (Washington: Congressional Research Service, January 31, 1990), p. 16.

[60]Jamestown Band of Klallam, Lummi Indian Tribe, Quinault Indian Nation, "Tribal Self-Governance: Shaping Our Own Future," a red paper, June 1, 1989, p. 2.

the BIA for funding, which is provided in a lump sum grant. One obstacle to negotiating compacts is the sharing of facilities between self-governance tribes and non-self-governance tribes. Tribes and the Self-Governance Office in the Interior Department have also alleged that the BIA has been slow in responding to tribal requests for funding information and has delayed compact negotiations.

Participation in the project is voluntary and a tribe may drop out at any of the three stages. Initially slated to include only 10 tribes, the program has been expanded to include 30 tribes. By the end of 1992, 17 tribes had successfully negotiated self-governance compacts and 13 were engaged in the negotiating process.

In December 1991 Congress extended the project until 1996 and appropriated $5 million to the self-governance project, $2 million more than was requested by the Interior Department. The additional money was used to fill gaps left by higher than expected start-up costs and the indivisibility of some BIA fund allocations.

The project is the latest in a series of steps designed to encourage and develop the capabilities of tribal governance. The program provides participating tribes with the financial resources and freedom to administer programs that were formerly run by the BIA. In 1991 Congress authorized the secretary of Health and Human Services to establish a similar self-governance arrangement between tribal governments and the Indian Health Services.

A few dozen tribes have joined the self-governance program and more may follow, but many more are unable to participate in the project because they lack the will or the skills necessary for negotiating and implementing a comprehensive compact. Only tribes that have capable and stable leadership will be able to negotiate with the BIA. This leaves unanswered what the government can and should do to help tribes that are unable to move toward self-governance.

Economy Follows Sovereignty[61]

"Now we shall not rest until we have regained our rightful place. We shall tell our young people what we know. We shall send them to the corners of the earth to learn more. They shall lead us." - Declaration of The Five County Cherokees

A successful self-determination program will culminate in the termination of tribal dependence on federal programs. The discouraging fact, however, is that only a fraction of the 302 federally recognized reservations have the potential to develop self-sufficient economies. Most Indian tribes currently rely on federal funds for basic necessities and services that range from health care and education to sewage disposal and food stamps. At current funding levels, federal programs will continue to provide subsistence to the majority of tribes, leaving reservation residents to lives of deprivation or to opt for out-migration in order to achieve personal self-sufficiency.

The experience of the 1950s strongly suggests that the outright termination of federal assistance is not an acceptable option. If Congress and the responsible federal agencies could pick potential winners, economic development assistance could be directed to reservations with a potential for economic self-sufficiency. Federal officials, however, are hardly in a position to make this determination a priori. Few would have thought that the Mississippi Choctaws or North Carolina Cherokees would be able to attract private investment to their reservations

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[61]"A Pouch by the Highway," The Economist, December 19, 1992, p. 29.

or create several successful joint ventures. Nor could the government predict the farming successes of small communities like the Ak-Chin and Santa Ana. Defining a tribe as a looser often becomes a self-fulfilling prophecy.

The goal of federal policy should be to raise the standard of living on reservations by expanding opportunities to function independently of the federal welfare system. A precondition to achieving this is the creation of effective tribal governments. Current policies leading to the diminution of pervasive federal presence on reservations without skimping assistance is a promising first step. These efforts allow tribal governments to choose their priorities in reallocating resources and in designing tailor-made social welfare programs that address their specific needs. The self-governance project moves in that direction, but the number of tribes who can take advantage of such programs is limited. Further, it is unrealistic to think that a viable government can exist without a source of income.[62] If the federal government continues to be the major source of reservation income, tribal governments will remain beholden to the federal edicts and regulations.

In the foreseeable future tribes will remain dependent on the federal government for subsistence. As long as this remains the case, decisions concerning Indians will be made in Washington not on reservations. More active participation in federal politics by tribes and Indian organization may bolster their clout in shaping legislation effectively. While 85 percent of most eligible Indian members vote in tribal elections, federal elections often draw only 20 percent of the vote.[63] In states where Indians account for over 4 percent of the population--

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[62] Vine Deloria Jr. and Clifford Lytle, The Nations Within: The Past and Future of American Indian Sovereignty (New York: Pantheon Books, 1984), p. 258.

[63] Rochelle L. Stanfield, "Getting Out the Tribal Vote," National Journal, July 25, 1992, p. 1756.

Arizona, Montana, New Mexico, North Dakota, South Dakota, and Oklahoma--an organized Indian coalition can impact federal elections. Even this potential clout would necessarily be limited because the six states combined contain only 4 percent of the total U.S. population. In the 1992 elections, the Indian vote may have been crucial in the results of 3 tight races; in the newly created 6th district of Arizona, Montana's lone representative, and the senatorial race in North Dakota. These are promising signs.

Taking advantage of the resources available to them--federal, human, and natural--is the key to tribes' economic success. First, tribes need to improve their human capital. A comprehensive reform of reservation educational and training systems is necessary to implement and expand self-governance initiatives. A better educated and trained work force is also essential in decreasing deprivation on reservations. With requisite skills, tribal members could qualify for jobs when they exist on reservations or look for alternative opportunities off reservations. Additional funds are necessary if a significant number of reservation residents are to take advantage of training opportunities. To generate jobs, tribes need to foster the growth of small businesses that stabilize reservation economies. Natural resources need to be exploited both for the income they will provide tribes and the employment opportunities they will offer members.

If the suggested policies are to be implemented and lead to sustained economic growth on some reservations, it is unclear how or in what form tribal cultures will survive. While Indian tribes have displayed a unique resilience in clinging to their cultures in the face of adversity, their ability to maintain a cultural identity may diminish as they become better integrated into American society. Inter-marriage and a dilution of the culture will follow. Immigrants who gained economic success tended to adopt the lifestyles of mainstream society. Maintaining Indian heritage while striving to succeed in America will require a concentrated effort on

the part of individual Indians and community leaders. As a leading Indian advocate stated, "Until Indians accept responsibility for preserving and enhancing their own knowledge of themselves, no institution can enable them to remain Indians."[64] Resolving this conflict has been and will continue to be a challenge facing tribes. The more immediate challenge is to establish an economic environment that would enable tribes and individual Indians to escape the deplorable conditions that currently prevail on reservations, leaving philosophers and seers to contemplate the long-run consequence of economic self-sufficiency.

[64]Deloria and Lytle, p. 250.

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